

Unlikely Partners: Preemption and The “American Way of War”

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ABSTRACT

The paper discusses the implications of the current Bush administration's National Security Strategy (NSS), particularly its open adoption of preemptive military action as a viable option for dealing with threats to the United States, her allies, or other potential victims of aggression. The author examines the changing nature of the threat facing the United States and the international community to determine if preemption is a legitimate response.

Once a definition of legitimate preemption is established, it is applied to historical cases of claimed preemption. Most claims are rejected, as they usually founder on the requirement for the presence of an imminent threat. After sifting out the rare historical cases of true, legitimate preemption, the author outlines the contrast between preemption and the traditional "American Way of War." The paper concludes with a set of principles derived from Just War theory and other historical sources, as well as from conclusions drawn from the historical examples of preemption. These principles are intended as a guide to determine when preemption may be a legitimate option.

The study of preemption in history and the American approach to preemption demonstrate that the current NSS is a significant departure from American policy of past administrations. While preemption has been an unspoken option for the United States at least since the onset of the Cold War, it was never openly espoused. In fact, various administrations have condemned it when practiced by allies or other nations.

The changing nature of the threat, in particular the proliferation of weapons of mass destruction capable of employment with limited warning, is used by the administration to justify preemption as an option. Yet a decision to preempt also creates serious consequences beyond even that conflict, as it will serve as a precedent for future United States actions and for other regimes who may have less legitimate agendas. Already, the American adoption of preemption as a legitimate strategy has already caused other countries to set criteria for their own preemptive actions.

The author concludes that preemption is legitimate if it meets certain criteria. The enemy must demonstrate a clear intention to attack the U.S. or its allies. The attack must be imminent. The cause behind preemption must be just, and the U.S. must have right intentions towards the preempted state or group. Preemptive action must be proportionate in means. Domestic support for preemptive actions is crucial, and international support must be sought. Finally, a sustained effort must be anticipated to ensure that the threat, once neutralized, does not return, and that America's right intentions are demonstrated in its postwar actions.

Even when legitimate, preemption will require justification to the international community and to Americans as well. American adoption of preemption as a strategic option requires an additional effort by the administration to define when preemption is legitimate and when it is not. It will also require greater endeavors to help other nations resolve conflicts peacefully and dissuade them from applying preemption illicitly. Demonstrating a willingness to use preemptive force requires the utmost effort to ensure that when force is used, it is only when other means have failed to remove an imminent threat.

The Bush administration's National Security Strategy (NSS) released in September 2002 represents a significant departure from previous strategies, particularly the stated willingness to apply military force in a preemptive manner to counter threats "before they are fully formed."¹ The administration justifies this new posture by emphasizing the changes in the government's task of defending the nation against a more diverse enemy, an enemy with access to and willingness to use "dangerous technologies." The NSS lists the attributes that would make rogue states potential candidates for preemption;² previous administrations applied many of these same attributes to the Soviet Union, and the parallel is significant. Yet those previous administrations, though they at times considered preemption against the USSR, did not openly espouse it as an option. What makes the current situation different is the increased likelihood that rogue states will use weapons of mass destruction (WMD) against the United States, its allies, or other innocent countries. To the administration, this justifies consideration of unprecedented means to remove that threat.

Does the administration's declared willingness to preempt really constitute a break with the "American Way of War?" Is preemption legitimate? Do the new threats cited by the NSS justify a policy of preemption? What second-order consequences can we expect, both from enunciation of preemption and from its potential execution?

During the Cold War, the United States relied on deterrence to keep major wars from breaking out. Nuclear weapons were a last resort. But the overarching competition between the United States and the Soviet Union has ended, as has the influence that competition held over smaller states. Those smaller states now have more freedom of action, and ambitious leaders looking for an asymmetric advantage are less constrained in

their development of WMD. Already, countries such as Iraq have proven that they will use those weapons if they deem it advantageous. Even without employing WMD, regimes may use them to deter or threaten the United States and other potential enemies. In many ways, the United States finds itself less secure now than when the Soviet menace was predominant. Proliferation of WMD and the growing influence of violent ideologies have combined to form a new threat, less containable because it is less understood, less prone to deterrence because it is less predictable.

In that context, preemptive use of military force is a legitimate option for the United States. But such a policy does constitute a departure from the traditional “American way of war,” and any American strategist considering preemptive action must understand that. To legitimize preemption, the administration must establish certain preconditions. It must take preemptive action only after weighing the political costs of such actions against the objective to be achieved, and it must make a concerted effort to justify its actions in the domestic and international arena. The United States must adhere to traditional “just war” criteria and accepted international law for any contemplated use of force, but especially when using preemptive force. Preemption may be legitimate, but only in exceptional cases and not in the vast majority of conflicts brewing at any given time around the world, regardless of U.S. interests.

What is Preemption?

Also described as anticipatory self-defense, preemption occurs when one state attacks another out of a genuine fear of impending attack. Preemption excludes retaliation, as well as first strikes for other motives such as material gain or settling grievances.

Legitimate preemption implies an imminent threat. The more remote the threat, the harder it is to justify a preemptive strike, as historical examples below will demonstrate. Some scholars distinguish between preemptive war and “preventive war,” the latter implying a longer-term threat that is growing to a point where a country becomes vulnerable to attack or is in a position of strategic weakness.³ The distinction between the two can be important in establishing a claim of legitimate right to preempt, as preventive wars are far more difficult to legitimize. Witness the universal condemnation and consequences that followed the Japanese surprise attack on Pearl Harbor. The Japanese strike was not preemptive, as the United States was not poised to attack Imperial Japan, but rather preventive due America’s military expansion, itself in anticipation of war.

Military force characterizes preemption. The Bush administration, since release of the current NSS, has pointed out that preemption does not necessarily require the application of military force, but could include arrests, sanctions and so forth.⁴ Nevertheless, it is the specifically stated use of military force preemptively that has generated controversy, and for which the most careful considerations of likely consequences must be made.

Is Preemption Legal?

International law generally acknowledges that a state need not wait until a blow is struck before it takes positive action to defend itself. Hugo Grotius, a 17th century leader in the development of international law, stated that it is “lawful to kill him who is preparing to kill.”⁵ Emmerich de Vattel echoed that sentiment while limiting its application. He cautioned that while a state “may even anticipate the other’s design, [it

must be] careful however, not to act upon vague or doubtful suspicions, lest it should run the risk of becoming itself the aggressor.”⁶

The United Nations Charter further narrowed the use of preemptive force by nations under international law. The preamble declares that “armed force shall not be used, save in the common interest.” Article 2(4) states:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.⁷

Later articles empower the UN Security Council with the sole authority to decide what constitutes a threat to or breach of the peace, and what, if any, military actions will be authorized to counter a breach.⁸

Article 51, however, acknowledges the right to act in self-defense before the issue can be brought before the Security Council:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.⁹

The wording of Article 51, while seemingly straightforward, generated two basic interpretations of the right of self-defense. The “restrictive” view holds that member states may exercise the right of self-defense *only* if an armed attack occurs, prohibiting or severely limiting the legitimacy of preemptive attacks. On the other hand, the “expansionist” view focuses on the stated “inherent right” and holds that no nation should be forced to endure a first strike before defending itself, especially against an enemy capable of delivering weapons of mass destruction. Without a threat of anticipatory self-defense (preemption), a strategy of deterrence is seriously hindered.¹⁰

Finally, the argument goes, the frequent deadlocks of Security Council deliberations provide nations little confidence that collective action will be taken in time to prevent an aggressor from attacking.¹¹

Claimed Preemption in Modern Conflicts

Despite a general acknowledgement of its legitimacy, true preemption is extremely rare in history. Excluding surprise attacks carried out for other motives--even though the attacks may be cloaked in claims of anticipatory self-defense--few examples of legitimate preemption remain.

For instance, regimes often mask aggressive purposes behind claims of legitimate preemption. In 1940, Germany claimed anticipatory self-defense in its attack of Norway, declaring its need to protect itself from British occupation of that country. This defense was presented at the Nuremberg trials but, even though Great Britain was shown to have intentions to occupy the Norwegian coast, the International Tribunal concluded that Germany did not know of those intentions; therefore the legitimacy of the invasion was rejected.¹²

Germany in 1914 is said by some scholars to have launched a preemptive attack against France to remove that threat so she could then attack Russia (also preemptively) before she could complete mobilization. However, France was not preparing to attack Germany, and would have had no reason to if Germany did not attack Russia; therefore the legitimacy of Germany's preemption can be rejected.

A preemptive attack that nears the criteria for anticipatory self-defense is the Israeli strike on Iraq's Osirak nuclear complex in 1981. The Israelis stated that Osirak was intended to produce nuclear weapons, that Iraq had refused the International Atomic

Energy Agency's attempts to inspect the reactor, that Iraqi president Saddam Hussein stated that the reactor and its products were for use against the "Zionist enemy," and that diplomatic efforts to stop Iraqi production of nuclear weapons had failed.¹³ However, since the reactor was not yet operational, the threat lacked immediacy. Israel argued that humanitarian considerations required destruction of the facility before it went on line so as to preclude the spread of radiation to nearby Baghdad. Immediacy was created in the plant's scheduled opening the following month. Israel claimed that they could delay preemptive action no longer.¹⁴ Besides the question of an imminent threat, Israel's decision to attack hinged on Saddam's intention to use the plant to build nuclear weapons and use them against Israel. While Saddam's true intentions may never be determined, Israel failed to convince a skeptical world that they faced a clear and imminent threat from the Iraqi facility.

Perhaps a better example of a limited preemptive attack was Great Britain's destruction of the French Fleet moored at Mers-el-Kebir, Algeria in 1940, to keep it from falling into German hands following the German victory in France. While it was subsequently revealed that Germany did not intend to seize the fleet,¹⁵ the threat must be considered through the eyes of the threatened state. As England was already at war with Germany, the threat posed by the French ships was a reasonable conclusion and created a degree of immediacy. The loss of French lives complicated British efforts to rally Free French elements against Germany, but Britain perceived that the threat posed by the fleet outweighed that consequence.¹⁶ An interesting parallel also exists with the German claim of preemption that same year in Norway. Britain could not have known that the Germans planned to seize the fleet since they did not plan to do so. Germany's claim of

preemption was denied while Great Britain's, though it enraged France, was allowed to pass without international condemnation, thus highlighting the importance of international perceptions of the threat.

Two examples in the Twentieth Century come closest to meeting the definition of legitimate preemption. The first was China's intervention in Korea after UN forces approached the Yalu River in 1950. After the defeat of North Korea's offensive into South Korea, China warned that the advance of U.S. forces across the 38th parallel constituted an unacceptable threat. Then, as those forces reached the Chinese border, China intervened to remove that threat. It can be argued that the actual threat to China was not an imminent U.S. or UN attack on China proper, but rather the longer-term irritant of a unified, democratic Korea backed by U.S. troops (preventive war).¹⁷ But like Britain's concern over the French fleet at Oran, legitimate preemption hinges on a reasonable fear of being attacked, not necessarily the actual likelihood of that attack. In China's case, both the rapid approach of UN forces to the Chinese border and the strident anti-communist rhetoric of the U.S. government in general, and that of General MacArthur in particular, could have created the fear of a continued attack into Manchuria. Until China's records are opened for scrutiny, the world will not know for sure if its entry into the Korean War was truly based on the fear of UN attack. However, China's subsequent actions indicate that it was satisfied with removing the threat from its border and ensuring a buffer state remained between them and U.S.-allied South Korea. This strengthens the case that the Chinese attack was both preemptive and legitimate.

The second, and probably best example of legitimate preemption is the Israeli attack on Egyptian forces to open the Six Day War in 1967. During the latter part of May 1967,

it became obvious to Israeli leaders that Egypt, aided by its Arab allies, intended to attack Israel. Egypt massed forces in the Sinai, expelled UN observers, and closed the Straits of Tiran to Israeli shipping. Egyptian president Gamel Abdel-Nassar openly stated that Egyptian aims were nothing short of the destruction of the state of Israel.¹⁸ Syria aligned itself with Egypt, and once Jordan entered the alliance as well, Israel faced possible war on three fronts. Certain of attack once Egypt achieved its desired strength in the Sinai, Israel attacked first, destroying much of Nasser's air forces on the ground and disrupting the impending Egyptian attack. Israel's decision to preempt was based on the fear of the consequences of awaiting a certain Egyptian attack. Israel attacked a clear and imminent threat, a textbook case of legitimate preemption.

Why is true preemption so rare?

Two fundamental reasons limit preemption to only the most dire of circumstances. The primary reason is the enormous political disadvantage accorded to the side firing the first shot. True preemption can be difficult to prove after the fact, and governments go to great lengths to portray their country as the victim of aggression rather than the instigator of war. Maintaining a defensive posture until attacked greatly aids the effort to gain international support and deny support to its adversary.¹⁹

This distinction is important if the rival state is a peer competitor, but perhaps even more so if the state contemplating preemption is weaker. For a state dependent on external support during wartime, a decision to preempt entails tremendous risk. In 1967, Israel delayed its decision to preempt well after Egyptian intentions were known. Meanwhile, negotiations continued with France, Great Britain and the United States to ensure support in the event Israel had to attack first.²⁰ United States support was so

critical that a preemptive attack was postponed repeatedly until a “yellow light” was given by the Johnson administration.²¹ It is also important to note that while Israel expected attacks from Syria and Jordan, their preemptive attack was directed solely at the most imminent threat, Egypt.²² This self-imposed restraint strengthens the claim of legitimate preemption while highlighting the political risk entailed in a decision to preempt.

In 1973, Israel again found itself with unambiguous warning of an impending Egyptian attack, but this time chose not to preempt out of a fear of loss of U.S. support. Israel felt it had to prove that it was the victim of aggression, “even if this ruled out preemptive action and handicapped us in the military campaign.”²³ The losses suffered by Israel during the opening hours of the war were severe, but U.S. support of Israel, both diplomatic and material, helped Israel turn the tide and defeat Egypt and her allies.

Even states clearly starting a war for aggressive purposes usually attempt to depict themselves as victims of aggression. While these attempts are often transparent to the outside world, they can benefit the aggressor state at home. Germany’s claim of a Polish attack in the early hours of September 1, 1939 fooled few outside the Third Reich, but it helped Hitler solidify domestic support for his aggressive campaign. The role of victim can be as important a position within a country as without.

In fact, loss of domestic support often has a disastrous effect on a regime’s prosecution of a war. In extreme cases it can spark a revolution, as in Russia in 1917. Partial loss of domestic support can still affect the outcome of a war, as it did when North Vietnam successfully convinced many Americans that it was the victim of American aggression. This success masked North Vietnam’s acquisitive goals in Southeast Asia,

aided the antiwar movement within the United States, and eventually overshadowed President Johnson's domestic agenda and ended his bid for a second term in 1968.²⁴

A second reason for the rarity of preemptive wars is that the fear of being attacked preemptively leads nations to avoid provocative actions (of which preemption is the most extreme) in times of crisis. In other words, the consequences of entering a preemptive war are so serious that leaders will "try to decrease the dangers of preemptive war by taking actions intended to alleviate the opponent's fear of a surprise attack."²⁵ During the Cold War, "hot line" communications available to leaders of the U.S. and the Soviet Union ensured that one side's actions were not unintentionally provocative. American and Soviet moves during the Cuban Missile Crisis show how seriously each side took the dangers of the first use of military force. The Soviets on several occasions during the Cold War were convinced that the United States was about to attack them, yet they did not take preemptive action either against the United States or its European allies.²⁶

Not simply a cold war or nuclear age phenomenon, Stalin in 1941 refused to take preventive measures, even defensive ones, despite overwhelming evidence that Germany was preparing to invade the Soviet Union. Evidence shows that Stalin feared provoking Hitler into attacking, and he instead clung to the small hope that Germany did not plan to invade. In July 1990, frontline Kuwaiti troops were given annual leave only days before the Iraqi invasion in order to avoid any provocation of Saddam Hussein.²⁷

Preemption and the American Way of War

Examples of legitimate preemption in modern warfare are rare; for the United States, they are nonexistent. The United States has built a reputation for being willing to defend itself abroad only after receiving the enemy's first assault. History is replete with

examples of how America waited for the enemy to strike first before returning fire. This stance excluded preemptive attacks under all but the most limited circumstances, and can be traced back at least as far as the *Caroline* affair. In 1837, British forces crossed the Niagara River into the United States and destroyed a commercial U.S. vessel allegedly supplying Canadian rebels. Secretary of State Daniel Webster demanded an apology and indemnification for the attack, stating that preemption was allowed only in the most limited of circumstances. If claiming the right of anticipatory self-defense, “It will be for that government to show a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation.”²⁸

The United States has traditionally held to Webster’s stance on preemption and the “restrictive” interpretation of Article 51 criteria for self-defense. It has relied on deterrence, and normally has awaited an enemy’s first blow before going to war. This perspective was feasible because, at least prior to the Nuclear Age, the United States could afford to absorb an attack and still expect to win, and maintaining the moral high ground was key to domestic, if not international, support. With the onset of the Cold War and a potential nuclear foe, the likelihood that a preemptive strike would generate a much wider war became a key reason for restraint. Finally, a restrictive view of preemption avoided setting a precedent that would allow other states to start wars by claiming their own right to preempt.

Both the fear of sparking a wider conflict and the desire avoid being labeled the aggressor played into decision making during the Cuban Missile Crisis in 1962. President Kennedy approved a “quarantine” of Cuba to remove the threat of Soviet nuclear missiles rather than unleash a preemptive strike as recommended by some on his

Executive Committee. Attorney General Robert Kennedy argued that the United States could not afford to be seen as having conducted a “Pearl Harbor in reverse,”²⁹ worried about the likelihood of a third world war as well as entering such a conflict as the apparent aggressor. In the end, the action was labeled a “quarantine” rather than a blockade, so as to avoid giving a pretense for war over a “blockade.” Even while internal debate continued, diplomatic efforts between the U.S. and the Soviet Union helped achieve an acceptable solution, in which the U.S. removed its missiles from Turkey in exchange for the Soviets dismantling the Cuban missiles.³⁰ A decision to launch a strike against the missile sites would not have been legitimate preemption, due to the lack of an immediate threat (the ballistic missiles had not been installed yet) and the availability of effective options short of military force.

Interestingly, the Cuban Missile crisis has been used as precedent both by those backing the current stance on preemption and those criticizing it. In the current NSS, Bush uses Kennedy’s words from 1962 as an endorsement of preemption:

Neither the United States nor the world community can tolerate deliberate deception and offensive threats on the part of any nation, large or small. We no longer live in a world, he said, where the actual firing of weapons represents a sufficient challenge to a nation’s security to constitute maximum peril.”³¹

On the other side of the argument, Senator Ted Kennedy argues that the decision to reject a preemptive strike against the missile sites in 1962 showed the wisdom of refraining from preemption and the likely consequences of acting rashly in a crisis.³² Regardless, the incident shows the extremely critical step that a decision to preempt would constitute at a time when preemption was not yet a stated option. The

deliberations of the Kennedy administration also show that preemption *was* a considered option, had the quarantine not been effective.

A restrictive interpretation of Article 51's right of self-defense has helped the United States deescalate crises around the world by denying the right of states to act preemptively. This was demonstrated in the Reagan administration's condemnation of Israel's Osirak strike. With the current NSS, this has begun to change. Already, Australia has embraced preemption in the wake of the bombing of the nightclubs in Bali.³³ More recently, Japan announced that it "would attack North Korea if [Japan] had evidence that Pyongyang was preparing to launch ballistic missiles."³⁴ Would Japan wait until it knew whether the missiles were aimed at Japan, or that they were not simply part of another test? Would Japan have issued this warning of preemptive action had not the Bush administration done so first? As the warnings issue back and forth, the North Koreans themselves may decide to preempt if they feel they are imminently threatened by a strike against their nuclear capabilities.

Similarly, countries elsewhere may decide to state their need to preempt in order to remove a longstanding threat. India and Pakistan have long been on the verge of open conflict, actually going to war several times. With both countries openly possessing nuclear weapons, both the incentive to preempt and the likely consequences increase significantly.

Perhaps the current NSS simply states a willingness to employ an option that has always existed, but which until now has always been rejected. But does this stated willingness imply that the bar, above which preemption is legitimate, is now lower? Or is the endorsement of preemption simply a new means of deterrence? The recent trends

of radical ideologies mixing with weapons of mass destruction, non-military weapons such as civilian airliners used to create mass casualties, and the advancement of communications, financial and explosives technology, have created less-predictable enemies. Troops do not need to be mobilized or massed on borders if mobile, nuclear-tipped missiles can be readied and launched in secret. Non-uniformed “fighters” can blend with the citizens of an enemy nation as they prepare and carry out large-scale attacks made more deadly with the use of chemical, biological or enhanced explosive technology. Rapid communication and navigation capabilities allow attacks to be coordinated from afar, and allow an attacker to mass effects without massing forces. Unprecedented threats may indeed require unprecedented strategies.

But preemption not based on careful consideration of motive, means and alternatives could have a high cost. To be responsible to the international community, the administration must define not only when preemption is legitimate, but also when it is not. It also must increase its efforts to resolve other pending and future conflicts peacefully, an even greater imperative if preemptive actions have been used to solve our own conflicts. Otherwise, the abuse of preemption by other nations is a likely consequence, and the U.S. will stand accused even if it is not directly involved in the conflict.

Principles for Legitimate Use of Preemptive Military Force

Preemption can be legitimate, but it poses numerous challenges--moral, political and practical. It makes sense, then, to develop a set of principles to guide deliberations on preemption. These will assist in maintaining the moral high ground traditionally valued by the United States when it goes to war; generate international and domestic support for

military actions; prevent wider, protracted conflicts; and avoid setting dangerous precedents. The seven principles described below follow the conclusions drawn from the historical examples listed above, but also account for the changing nature of the threat now facing the United States and its allies.³⁵

1. There must be a clear indication that an aggressor intends to attack the United States or its allies.³⁶ An adversary's possession of the capability to attack does not justify anticipatory self-defense; unless intent can be demonstrated, it implies that other means of resolving the pending conflict have not been exhausted. A preemptive attack in such a case would risk condemnation for an unwarranted act of war. Some groups, such as Al-Qaeda, have already signaled their intentions to attack the United States. Others, such as North Korea, have issued threats that remain ambiguous, or contingent on events. Clear intent to attack must be concluded before preemption can be legitimate.

2. The attack must be imminent.³⁷ In an era of proliferation of weapons of mass destruction and suitable delivery vehicles, "imminence" becomes a topic of debate, and it must be recognized that the combination of capability and intent may intersect to rapidly create a crisis situation and justification for preemption. Nevertheless, without a strong certainty that the adversary was about to initiate an attack, the U.S. would be open to accusations of unwarranted aggression. Imminence implies that no time remains for other options, short of military action, to be attempted. It is on this factor alone that the legitimacy of preemptive military action is likely to be judged.

3. There must be a just cause. Before a decision to preempt is made, the administration must ensure its cause is just.³⁸ This is not simply to say that removal of a threat to the United States or its allies would constitute just cause. To qualify, the good

to be achieved through a successful strike or campaign must outweigh the evil that the action will necessarily produce, to include the possibility of a larger and protracted war. The impact on neutral and friendly countries must be considered as well. In other words, is the removal of the threat worth the destruction, cost, and second-order consequences that will likely follow? In this, it is critical that we understand our enemy and his intentions, motivations and fears, those of allies on both sides, and those of neutrals and fence sitters in the region.

4. The U.S. must have “right intentions.”³⁹ Just as important as having a just cause is having the right intentions. Particularly, war aims must be in line with the just cause. For instance, regime change may not be a legitimate goal if the threat to the United States or its allies is of a limited nature. Rather, the goal should be to remove the imminent threat and deter further aggressive action on the part of the enemy. If that goal cannot be attained short of regime change, then the latter could be considered a legitimate objective of a preemptive attack.

5. Preemptive action must be proportionate in means. The action taken must demonstrate proportionality in means as well as ends. Leaders must respect the limits of what military force can be expected to accomplish, and use no more force than necessary. While an extended effort may be required to remove the threat, actions and effects must be limited to those objectives that give the threat its importance. A disproportionate use of force that results in unnecessary destruction and suffering may prolong the conflict, create a renewed threat among its victims, overshadow the legitimate purpose of the preemption, and discredit the preempting nation.

6. Domestic support is crucial, and international support important. Congressional support should be secured beforehand if possible, and immediately after initiation of hostilities only if time does not allow prior consultation with Congress. As the most direct representatives of “the people,” congressional consent is imperative.⁴⁰ This is not done for political gain but out of an acknowledgement of constitutional obligations and the importance of public support to sustain the effort. If a case cannot be made to sway Congress, military action may be considered to be outside the sphere of legitimacy.

International support for U.S. actions should be sought. Perception control during the conflict will be a key to lasting success.⁴¹ In Vietnam, the political isolation of the U.S. and the success of North Vietnam in controlling perceptions led to a loss of not only international support but also domestic support. It is reasonable to believe that the United States will not build a complete international consensus for any preemptive action it might take, but it will be important to generate international support for the American cause and inhibit support for its adversary. The administration must make every effort to get its story out to the world, and in particular into the affected region. As much as the United Nations may be maligned for its reluctance to endorse forceful measures, it must be recognized that much of the world looks to the UN as the only impartial arbiter of international conflict. In order to make a convincing case, it may also be necessary for the U.S. to release sensitive information in order to make a convincing argument about the threat to be neutralized, the benefits of taking action now, and the consequences of vacillating. In the present debate over Iraq, the administration made a strong case before the UN for Iraqi noncompliance, but failed to convince many that the cost of delaying war outweighed the benefits of an immediate military solution. While the loss of support

from traditional allies may have been somewhat offset by a “coalition of the willing,” the campaign became much more challenging to plan and execute.

7. A sustained effort must be anticipated. Finally, while preemption could involve as little as a single strike, preemptive actions must be undertaken only if the administration and the country are willing to sustain the effort for however long it is needed until success is achieved.⁴² Military action must be accompanied by a realistic and supportable plan for the peace to follow. Whether it involves the rehabilitation of a chastened enemy or the rebuilding of a nation after the destruction of its leadership, the responsibility for those actions cannot be shirked once the fighting is complete. While any such plan derived before conflict begins will necessarily have to be modified as the conflict progresses, the analysis conducted beforehand will help ensure that a framework is laid for the conduct of the ensuing peace.

Conclusion

Preemption remains a legitimate strategic option for the United States, provided that the administration follows strict guidelines such as those described above. The consequences of a decision by the world’s remaining superpower to act in a preemptive manner will likely restrain the United States from firing the first shot unless rigorous criteria are met. On the other hand, no nation should be required to wait for an enemy’s first blow before defending itself, especially in an era of weapons of mass destruction held by groups unconstrained by protocols of the past. The demonstrated American willingness to preempt may well deter all but the most determined adversary, and in the long run may achieve some of the administration’s NSS objectives, even if, or especially if, the preemptive option is never exercised.

Notes

¹ *The National Security Strategy of the United States of America* (Washington, DC: The White House. September 2002), 2.

² NSS, cover letter, 13-14.

³ Dan Reiter, "Exploding the Powder Keg Myth: Preemptive Wars Almost Never Happen," *International Security*, Vol. 20, No. 2 (Fall 1995), 6

⁴ Staff report, "Caveat Pre-emptor: Pre-emption is Easier Said than Done, but It is Gradually Being Defined" *The Economist* (June 22, 2002), downloaded from the Internet.

⁵ David M. Ackerman, *International Law and the Preemptive Use of Force Against Iraq*, (Washington, DC: Library of Congress; Congressional Research Service, 2002), 2.

⁶ Ibid.

⁷ *The Charter of the United Nations* (San Francisco CA, 1945), downloaded from UN Website, Article 2(4).

⁸ *UN Charter*, Articles 39, 41, 42.

⁹ *UN Charter*, Article 51.

¹⁰ John R. Henriksen, *International Claims to Anticipatory Self Defense: A Juridical Analysis*, (Washington DC: George Washington University, 1981), 10

¹¹ Ackerman, 4.

¹² Henriksen, 20.

¹³ Henriksen, 62-63.

¹⁴ Ibid.

¹⁵ Alistair Horne, "Mers-el-Kebir was a Bizarre and Melancholy Action," *Smithsonian* Volume 16, No. 4 (July 1985) 122-138.

¹⁶ Ibid.

¹⁷ Reiter, 23.

¹⁸ Michael Walzer, *Just and Unjust Wars*, (New York, NY: Basic Books, 1977) 83.

¹⁹ Reiter, 25.

²⁰ Moshe Dayan, *Moshe Dayan: The Story of My Life*, (New York: William Morrow, 1976), 342-6, Abba Eban, *Abba Eban: An Autobiography* (New York: Random House, 1977), 334-355.

²¹ Reiter, 19.

²² Eban, 395.

²³ Dayan, 461.

²⁴ H. R. McMaster, *Dereliction of Duty*, (New York: HarperCollins Co., Inc, 1997), 238.

²⁵ Reiter, 28.

²⁶ Reiter, 30.

²⁷ Reiter, 31.

²⁸ Daniel Webster, *The Works of Daniel Webster, Volume VI*, (Boston: Little Brown and Co., 1854), 261.

²⁹ Theodore Sorensen. *Kennedy* (New York: Harper & Row, 1965), 684-5.

³⁰ Sorensen, 696.

³¹ As quoted in Jefferson Morley, “A Precedent That Proves Neither Side’s Point,” Washington Post (October 13, 2002), B4.

³² Ibid.

³³ Cable News Network, Staff and Wires story, “Howard Sticks to “Pre-emptive Stance,” downloaded from CNN.com web site, 2 Dec 2002.

³⁴ Cable News Network, Staff and Wires story, “Japan Ready for N. Korea Attack,” downloaded from CNN.com web site, 13 February 2003.

³⁵ The principles listed in this section are derived from various sources regarding “just war,” rights to anticipatory self-defense, and general strategic principles. These include: St. Thomas Aquinas’ *Jus ad Bellum* criteria as quoted in William Vincent O’Brien, *The Conduct of Just and Limited War*, (New York: Praeger Publishers, 1981), 16-32; O’Brien’s own criteria for “anticipatory self-defense,” 133; Myres S. McDougal and Florentino P. Feliciano, *Law and Minimum World Public Order*, (New Haven and London: Yale University Press, 1961), 217-228; The *Caroline* affair arguments in Webster, 302; Henry A. Kissinger, “Our Intervention In Iraq,” Washington Post (August 12, 2002), A15.; and Joe Strange, *Capital “W” War: A Case for Strategic Principles of War*, (Quantico: Marine Corps University, 1998), 7-63.

³⁶ O’Brien, 133

³⁷ Ibid.

³⁸ St Thomas Aquinas set three criteria for *Jus ad Bellum*, the first of which is a just cause, described in O’Brien, 20. Also, the requirement to consider other aspects such as motives, fears, etc., was inspired by Strange, 47-63.

³⁹ St. Thomas, quoted in O’Brien, 30.

⁴⁰ Taken from St. Thomas’ principle that only competent authority can conduct just wars. In the case of the United States, this must include Congress as well as the President. O’Brien, 16.

⁴¹ Strange, 39-42. This could also be considered an extrapolation of St. Thomas’ requirement for competent authority to conduct war, as the international community increasingly looks to the United Nations or other multilateral bodies as the only competent authorities for the conduct of war.

⁴² Kissinger.

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